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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
KAUAI ISLAND UTILITY COOPERATIVE )  
 )  
For a Declaratory Ruling Regarding )  
The Applicability of Hawaii Revised )  
Statutes Section 269-27.5 and )  
Section 269-27.6 to the Kukui'ula )  
Relocation Project. )  
\_\_\_\_\_ )

DOCKET NO. 04-0300

DECISION AND ORDER NO. 21466

Filed Nov. 17, 2004  
At 8 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	
KAUAI ISLAND UTILITY COOPERATIVE )	Docket No. 04-0300
For a Declaratory Ruling Regarding )	Order No. <b>21466</b>
The Applicability of Hawaii Revised )	
Statutes Section 269-27.5 and )	
Section 269-27.6 to the Kukui'ula )	
Relocation Project. )	
_____ )	

DECISION AND ORDER

I.

Background

KAUAI ISLAND UTILITY COOPERATIVE, ("Petitioner") seeks a declaratory ruling that: (1) a public hearing, pursuant to Hawaii Revised Statutes ("HRS") § 269-27.5, is not required for the Kukui'ula relocation project ("Project"); and (2) a determination whether the proposed relocation of the transmission system should be placed, constructed, erected, or built above or below the surface of the ground, pursuant to HRS § 269-27.6(a), is not required;<sup>1</sup> in the alternative, if the commission determines that HRS § 269-27.6(a) applies, Petitioner requests that the commission "approve the portions of the Project to be constructed overhead as well as those constructed underground[.]" Petitioner makes its request for declaratory ruling in accordance with

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<sup>1</sup>Kauai Island Utility Cooperative's Petition for Declaratory Ruling Exhibits A through E Memorandum in Support of Petition for Declaratory Ruling Attachments 1 through 14 Verification and Certificate of Service, filed on October 7, 2004 ("Petition").

Hawaii Administrative Rules ("HAR") chapter 6-61, subchapter 16 and HRS § 91-8.

Petitioner served copies of its Petition on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). On October 20, 2004, the Consumer Advocate filed its statement of position concluding that: (1) HRS § 269-27.5 is not applicable to Petitioner's proposal to relocate portions of their existing 69 kilovolt ("kV") overhead transmission line in Kukui'ula, and, therefore, a public hearing is not required in the instant case; and (2) This 69 kV transmission line relocation Project does not require a commission determination as to above or below ground surface construction, and, therefore, HRS § 269-27.6(a) is not applicable.

## II.

### Background

Petitioner is a non-profit cooperative association organized under the laws of the state of Hawaii, and is an operating public utility engaged in the provision of electric energy on the island of Kauai. Petitioner currently owns and operates a 69 kV overhead transmission line running from its Port Allen power plant to its Koloa Substation. In accordance with a prior obligation entered into by Petitioner's predecessor, Kauai Electric, division of Citizens Communications Company ("Citizens") and a land developer, Petitioner has agreed to relocate portions of this 69 kV transmission line. The relocated line will be approximately four (4) miles in length, with

approximately three (3) miles to be constructed overhead and approximately one (1) mile to be constructed underground. Petitioner asserts that the entire relocated portion of the transmission line will be located in agriculturally classified and zoned areas. The Petitioner also asserts that the overhead line's closest point to any existing residentially zoned area will be 500 feet, and its closest point to any existing residence is estimated to be no less than 595 feet.

Petitioner represents that the Project's total cost will be approximately \$4,830,000. Of this total, the Kukui'ula Development Company, Hawaii, LLC ("KDC Hawaii") will pay for \$2,800,000 of the cost as customer contribution. As such, KIUC's share of the relocation project, less this customer contribution, will be approximately \$2,030,000.

### III.

#### Discussion

##### A.

#### HRS § 269-27.5

HRS § 269-27.5 requires a public hearing to be held by the commission "[w]henever a public utility plans to place, construct, erect, or otherwise build a new 46 kV or greater high-voltage electric transmission system above the surface of the ground through any residential area ...."

Petitioner represents that the relocation of its Kukui'ula 69 kV transmission line will be located at least 500 feet from any residentially zoned area and an estimated 595 feet from

any existing residence.<sup>2</sup> Petitioner further represents that this Project does not run through any existing residential neighborhood or area.<sup>3</sup>

In support of this Petition, KIUC provided exhibits that included photographs and pictorial renditions of the physical locations to where the 69 kV transmission line will be relocated. Several photographs show an aerial view of the relocation area with the proposed route of the relocated transmission line, and the route's proximity to the superimposed boundaries of the agricultural and residential zoned areas.

Based on the record, particularly Petitioner's representations, the commission finds that the Project's scope of work will not involve the placement, construction, or otherwise building of a new 46 kV or greater "high-voltage electric transmission system above the surface of the ground through any residential area[.]" Thus, the commission concludes that HRS § 269-27.5 does not apply, and a public hearing is not required.

B.

HRS § 269-27.6

HRS § 269-27.6(a) states, in relevant part:

Notwithstanding any law to the contrary, whenever a public utility applies to the public utilities commission for approval to place, construct, erect, or otherwise build a new forty-six kilovolt or greater high-voltage electric transmission system, either above or below the surface of the ground, the public utilities commission shall determine whether

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<sup>2</sup>See, Petition for Declaratory Ruling, page 3.

<sup>3</sup>Id., at p.6.

the electric transmission system shall be placed, constructed, erected, or built above or below the surface of the ground[].

Both Petitioner and the Consumer Advocate state that HRS § 269-27.6(a) should not be applicable since Petitioner's share of the project, minus the customer contribution, will be approximately \$2,030,000, the net cost of the instant project will be less than the current \$2,500,000 threshold of General Order No. 7, paragraph 2.3.g.2. We disagree with this interpretation.

We construe HRS § 269-27.6(a) to require Petitioner to obtain commission approval of the Project since it involves the placement, construction, or building of a new 46kV or greater high-voltage electric transmission system, either above or below the surface of the ground.<sup>4</sup> Thus, notwithstanding the fact that commission approval is not required under General Order No. 7, paragraph 2.3.g.2., we conclude that HRS § 269-27.6(a) is applicable for the instant Project. Thus, we declare that a determination whether the proposed relocation of the transmission system should be placed, constructed, erected, or built above or below the surface of the ground, pursuant to HRS § 269-27.6(a), is required.

In light of the above, the commission will treat this Petition as also an application for approval under HRS § 269-27.6. However, prior to deciding whether the proposed relocation of the

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<sup>4</sup>See, In re Hawaiian Electric Company, Inc., Docket No. 04-0110, Decision and Order No. 21329, September 2, 2004.

transmission system should be placed, constructed, erected, or built above or below the surface of the ground, pursuant to HRS § 269-27.6(a), the commission will allow the Consumer Advocate thirty (30) days from the date of this interim decision and order to file an Amended Statement of Position containing its position on this issue. Further commission action will follow.

#### IV.

##### Declaratory Ruling and Order


THE COMMISSION DECLARES that, under the facts and circumstances of this case that: (1) a public hearing, pursuant to Hawaii Revised Statutes ("HRS") § 269-27.5, is not required for the Kukui'ula relocation project; (2) a determination whether the proposed relocation of the transmission system should be placed, constructed, erected, or built above or below the surface of the ground, pursuant to HRS § 269-27.6(a), is required, as long as the facts presented and representations made to the commission in this docket remain true and accurate.

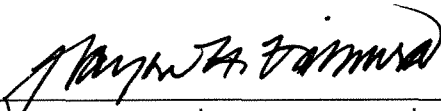
THE COMMISSION ORDERS that the Consumer Advocate may file an Amended Statement of Position containing its position on the issue on whether the proposed relocation of the transmission system should be placed, constructed, erected, or built above or below the surface of the ground, pursuant to HRS § 269-27.6(a) within thirty (30) days from the date of this interim decision and order. Further commission action will follow.


DONE at Honolulu, Hawaii

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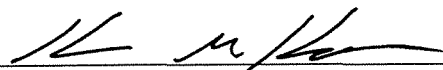
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kevin M. Katsura  
Commission Counsel

04-0300.eh



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21466 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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\_\_\_\_\_  
Karen Higashi

DATED: NOV 17 2004